



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 16514035

Date: AUG. 23, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an urban planning and environmental policy researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center concluded that the Petitioner qualified for classification as an advanced degree professional and that his proposed endeavor had substantial merit. However, the Director concluded that the evidence did not establish that the Petitioner is well positioned to advance the endeavor, or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well-positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>2</sup> See also *Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>4</sup> The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

During Spring 2014, the Petitioner worked as a graduate assistant in the Department of Urban Planning and Environmental Policy at [REDACTED] University [REDACTED]. From May 2015 until May 2019, she served as a research assistant for the [REDACTED] in Science and Technology at [REDACTED]. At the time of filing, the Petitioner was employed as a construction project manager and researcher by [REDACTED].<sup>5</sup> As outlined below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework.

### A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that she intends to continue her research involving “Sustainable Urban Planning, Public Health, Climate Change, Environmental Justice (EJ), and Waste Management.” She asserted that her proposed research is of the “utmost importance to public health and the environment” due to all of the environmental issues currently affecting the world at large. The Director determined that the Petitioner had demonstrated both the substantial merit and national importance of her proposed endeavor. The record supports this conclusion. For example, the Petitioner has submitted documentation indicating that the benefit of her proposed research has broader implications for the field, as the results are disseminated to others in the field through scientific journals and conferences. Accordingly, we agree with the Director that the Petitioner meets the first prong of the *Dhanasar* framework.

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<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>4</sup> The Petitioner earned her PhD in Urban Planning and Environmental Policy from [REDACTED] University in May 2019.

<sup>5</sup> As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her research positions to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

## B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of her curriculum vitae, academic credentials, and published articles. She also offered letters of support discussing her graduate research as well as research conducted as part of her employment with [REDACTED]. The Director concluded that the Petitioner had not established she is well positioned to advance her endeavor because she had not shown in what capacity she would be employed as a researcher<sup>6</sup> and she had not demonstrated that her publications and activity in her field is indicative of a record of success in the field.

The Petitioner contends on appeal that she has continued to be employed by [REDACTED] [REDACTED] and [REDACTED] which “establishes the capacity in which she endeavors to be employed.” She asserts that she recently co-authored two articles published in the International Journal of Trends in Research and Development. Additionally, the Petitioner maintains that her research experience, published work, and e-mails praising her work demonstrate that she is well positioned to advance her proposed endeavor. For the reasons discussed below, the record supports the Director’s determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance her proposed research under *Dhanasar*’s second prong.

In e-mails supporting the petition, several discussed the Petitioner’s research work at [REDACTED]. For example, regarding the Petitioner’s research paper [REDACTED] [REDACTED] an e-mail from [REDACTED] praised the Petitioner’s article for providing him with “the necessary information to help me to better grasp and understand the complex subject matter of the above referenced topic.” Additionally, an email from [REDACTED] construction inspector, regarding the Petitioner’s research paper [REDACTED] [REDACTED] indicates he used some of the information in “his own work in assessing landfill sites for disposal with contractors doing County projects.” [REDACTED] added that he believes the Petitioner “will have a valuable impact on the communities [she] serve[s].” The emails from [REDACTED] and [REDACTED] appear to come from personal accounts and do not otherwise identify the organizations or businesses to which they are affiliated. Without more, the letters from [REDACTED] and [REDACTED] are not probative evidence that the Petitioner’s research has been implemented in sustainable urban planning, public health, climate change, EJ, and waste management or otherwise constitute a record of success in the field.

The Petitioner also submitted several letters from references that discussed the Petitioner’s research projects at [REDACTED].<sup>7</sup> For example, regarding the Petitioner’s work on [REDACTED] [REDACTED] professor and director of the [REDACTED] [REDACTED] at [REDACTED] stated that the Petitioner’s findings “demonstrated why certain populations, especially the % female headed household, the % of unemployed and % of Black in the [REDACTED] [REDACTED] need to be paid special attention to when planning considerations are being taken. The goal of urban planning is to increase quality of life so therefore, government and policy-makers should ensure public resources are equitably distributed to the vulnerable groups.” While [REDACTED] stated that

<sup>6</sup> The Petitioner had not submitted evidence of her employment with [REDACTED] at the time of the Director’s decision but her employment had started before the time of filing her petition.

<sup>7</sup> While we discuss a sampling of these letters, we have reviewed and considered each one.

the Petitioner's "skills and creativity is perfectly tailored for her current projects" he did not offer examples of how the Petitioner's research has influenced the urban planning industry, has served as an impetus for progress or generated positive discourse in the field, or otherwise represents a record of success or progress rendering her well positioned to advance her proposed endeavor.

With respect to the Petitioner's work involving urban planning and environmental policy research, [ ] research program manager at [ ] asserted the Petitioner "has done tremendous work while conducting research at [ ]'s [ ] Department." While [ ] stated interest in the Petitioner's work resulted in becoming "a graduate assistant on the [ ] funded by the [ ] Foundation," she did not offer examples of how the Petitioner's research has influenced the urban planning and environmental policy industry, has served as an impetus for progress or generated positive discourse in her field, or otherwise represents a record of success or progress rendering her well positioned to advance her proposed endeavor.

Likewise, regarding the Petitioner's research conducted at [ ]'s [ ] Department, [ ] distinguished professor at [ ], asserted the Petitioner's "work has contributed to the body of knowledge and strengthens the scientific foundation of Environmental Justice for actions at the agency and, most especially, local and community levels." In addition, [ ] stated the Petitioner "worked as a research assistant on the [ ]" which is "funded by the [ ] Foundation and the research focus is to address health, well-being, equity and environmental issues impacting vulnerable Kids/families in select [ ] State." [ ] further stated that the Petitioner "works to assist with the data analysis and interpretation of the community health survey in all select [ ] states" and she has a "track record of success" but did not offer examples of how the Petitioner's work at the [ ] or research has been implemented, utilized, or applauded in the urban planning and environmental policy fields.

Additionally, while the Petitioner contends that she recently received a formal employment offer to be a senior scientist at [ ] as part of an effort to expand the scope of its [ ] Apprenticeship Program in the [ ] she does not offer evidence that this offer of employment shows a record of success or represents progress rendering her well positioned to advance her proposed endeavor. As a senior scientist, the Petitioner will be responsible for conducting research training in the environmental research laboratory at [ ] and to report her findings as published articles in peer reviewed journals. A letter from [ ] professor at [ ] states the Petitioner "will assist in developing the next generation of environmental scientists and engineers to further the mission of protecting human health and the environment by reducing greenhouse gas emissions, improving air quality, managing chemical risks, and protecting America's water." However, this offer of employment post-dates the filing of the petition, and therefore the Petitioner has not shown that this offer of employment shows a record of success or represents progress rendering her well positioned to advance her proposed endeavor prior to or at the time of initial filing. *See* 8 C.F.R. § 103.2(b)(1).

The Petitioner also submitted documentation demonstrating she has published numerous articles and has presented some at conferences. However, the Petitioner has not submitted any documentation, such as records of citations to her work, that would demonstrate the significance or level of distinction

for her research articles. Nor has the Petitioner established that her research articles are sufficient to show a record of success in her research or a level of interest in her work from relevant parties signifying that she is well positioned to advance her proposed urban planning and environmental policy research.

The record demonstrates that the Petitioner has conducted, published, and presented research during her graduate studies, but she has not shown that this work renders her well positioned to advance her proposed research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance her proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that her published and presented work has served as an impetus for progress in the urban planning or environmental policy field or that it has generated substantial positive discourse in these industries. Nor does the evidence otherwise show that her work constitutes a record of success or progress in advancing research relating to urban planning and environmental policy. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance her proposed research endeavor, we agree with the Director that the Petitioner has not established she satisfies the second prong of the *Dhanasar* framework.

#### C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that she is eligible for a waiver due to the impracticality of labor certification and the benefits of her proposed research. However, as the Petitioner has not established that she is well positioned to advance her proposed endeavor as required by the second prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The revocation of the previously approved petition is affirmed for the above stated reasons, with each considered as an independent and alternative basis for the decision.

**ORDER:** The appeal is dismissed.